contract. Therefore if there is no valid contract of carriage the relation of passenger and carrier does not exist, and the carrier is liable to one injured only in case of wilful and wanton negligence as in the case of a trespasser. This principle has often been applied in cases where a party is travelling on a non transferable pass issued to another, and thereby defrauds the carrier by representing that he is the other. *Railway Co.* v. *Beggs,* 85 Ills. 80. *Railway* v. *Thompson,* 107 Ind. 442. *Way* v. *Railway* Co., 64 Iowa 48. It has also been applied in cases where a person solicits and secures free transportation from the conductor, or makes untrue statements to the conductor, thereby inducing him to permit free carriage. *McVeety* v. *Railway,* 45 Minn. 268. *Condran* v. *Railway Co.,* 67 Fed. Rep. 522. These are cases wherein the parties claiming rights as passengers have secured free transportation through the agencies of fraud. But now by this case the principle is extended to include cases in which one fraudulently represents himself to come within a certain category in order to obtain special rates.

CORPORATIONS—EXCLUSIVE PRIVILEGES—STATUTORY CONSTRUCTION.—Quo warranto by the state against defendant, organized in 1900 under act of April 29, 1874 (P. L. 73) to furnish gas for lighting in Lackawanna County. In 1875 the Hyde Park Gas Co. had been incorporated under the same act, its charter covering Scranton alone. Said act provided that the franchise of the company first incorporated thereunder should be exclusive within its allotted district, and prohibited the incorporation of another company until said company should have divided among its stockholders a certain dividend. Such event had not occurred as to the Hyde Park Gas Co. Notwithstanding that previous to the incorporation of said Hyde Park Gas Co., another (Scranton Gas and Water Co.), already operated in Scranton under special act of 1854 (P. L. 500), *held* (Mr. JUSTICE BROWN, Mr. JUSTICE POTTER and Mr. JUSTICE MESTREZAT dissenting) that the grant to the Hyde Park Gas Co. was exclusive in Scranton as against defendant. *Commonwealth ex rel Attorney General* v. *Consumers' Gas Co.* (1906), — Pa. —, 63 Atl. Rep. 463.

We venture to disagree with this decision. The court declares that as there is no doubt or ambiguity in the statute of April 29, 1874, there is no room for construction. But does it not subject the statute to construction in interpreting "exclusive" to mean "exclusive except as to a company already in existence?" That the statute is open to construction we think admits of no reasonable doubt. In *London and North Western Ry. Co.* v. *Evans* [1893], 1 Ch. 16, maxims of construction were applied to a private act clear and unambiguous enough on its face. Be that as it may, we think that the act of April 29th is "susceptible on its face of two constructions" (175 U. S. 414, 419); at any rate there are two views expressed in the principal case as to its meaning. The argument for the prevailing view is based on *Freeport Water Works Co.* v. *Prager,* 129 Pa. St. 605, wherein it was held that the franchise of a company organized under act of April 29, 1874, was not exclusive as against an individual who prior to the incorporation of said company had sold water with the consent of the municipality; and *Lehigh Water Co.'s Appeal,* 102 Pa. St. 515, in which it was held that the legislature

did not intend the right to furnish water to be exclusive as against a municipality which was authorized by an act of 1867 to construct water works, etc. In these two cases the apparently liberal interpretation of the word "exclusive" is warranted by the statute itself, "exclusive" being modified by the prohibition against any other company. The only other cases involving this statute where "exclusive" was interpreted in any other than its "usual and most known signification" (BLACKSTONE, Vol. 1, Introduction, *page 59) are the *Scranton Electric Light and Heat Co.* v. *Scranton Illuminating, Heat and Power Co.,* 3 Pa. Co. R. 628, holding the statute did not apply to companies furnishing electricity for light, etc. (but *contra Wilkes-Barre Electric Light Co.* v. *Wilkes-Barre Light, Heat & Motor Co. et al.,* 4 Kulp. (Pa.) 47), and *Emerson* v. *Com.* 108 Pa. St. 111, excepting natural gas from the operation of the statute. The reason for the first holding was that it appeared from the fact that little was known of the possibilities of the use of electricity, that the legislature did not have it in mind; the reason for the second, that it seemed from the context of the statute that the legislature had reference to manufactured gas. So far only do the decisions go. Mr. JUSTICE BROWN dissenting, would have the statute apply only to districts where no company was as yet doing business. We are inclined to support him in this. We dismiss the possibility that the act had the effect of revoking the charter of the Scranton Gas and Water Works Co., as neither side entertains that view. The dissenting opinions have authority to support them. Grants to a corporation are construed most favorably to the public. THOMPSON CORP. Vol. IV, § 5345. In *Appeal of Electric Light and Heat Co.,* CHIEF JUSTICE GORDON says: "Monopolies are favorites neither with courts nor with the people * * * nor are they at all allowable except where the resultant advantage is in favor of the public, as, for instance, where a water or gas company could not exist except as a monopoly." Coming from one whose duty was to construe the act this expression carries weight. AMER. & ENG. ENC. OF LAW, Vol. 26 p. 633. Mr. JUSTICE POTTER quotes the statement in the preamble to the act of 1895 that the purpose for which exclusive rights are granted to gas companies is "the encouragement and establishment of such companies for the supplying of gas where no such supply was previously furnished." We admit this statement is not entitled to very much weight. *Koshkonong* v. *Burton,* 104 U. S. 678 and *Salters* v. *Tobias,* 3 Paige (N. Y.) 338 (on the force of declatory laws.) On the whole we submit that the "reason and spirit" (COOLEY'S BLACKSTONE, Vol. I, Introduction, * p. 60) of the law seem to support the dissenting views.

CORPORATIONS—PENAL OFFENSE—CONSTRUCTION OF STATUTE.—A domestic corporation was indicted for an alleged violation of Ky. St. 1903 § 576 requiring all but certain excepted corporations to place the word "incorporated" under their corporate name on "all printed or advertising matter used by such corporation." The company failed to put "incorporated" upon the labels on their beer bottles and the boxes containing them. *Held,* the labels were not advertising matter within the meaning of the statute, *Jung Brewing Company* v. *Commonwealth* (1906), — Ky. —, 96 S. W. Rep. 476.